

## CHARTERING OF VESSELS

*Exchange of notes at Rio de Janeiro September 30, 1942, with charter party and related United States letter of September 18, 1942*  
*Entered into force September 30, 1942*  
*Supplemented by agreement of December 7, 1942*<sup>1</sup>  
*Canceled by agreement of April 14, 1944*<sup>2</sup>

Department of State files

*The American Ambassador to the Minister of Foreign Affairs*

No. 1453

RIO DE JANEIRO, September 30, 1942

EXCELLENCY:

I have the honor to inform Your Excellency that the Government of the United States of America is in accord with the Brazilian Government as to the desirability of concluding an agreement between the two countries relative to shipping in accordance with the following terms:

Article 1—The Brazilian Government shall charter to the United States Government the following Government owned vessels, for the duration of the war in which the United States is at present engaged:

CEARALOIDE	Dw	8. 650
MINASLOIDE	"	8. 380
VITORIALOIDE	"	9. 500
NORTELOIDE	"	7. 535
GAVEALOIDE	"	9. 900
APALOIDE	"	7. 000
GOIAZLOIDE	"	8. 125
PELOTASLOIDE	"	7. 920
RECIFELOIDE	"	8. 050
BAIALOIDE	"	10. 107
RIOLOIDE	"	8. 575
SULOIDE	"	8. 050
PIRAILOIDE	"	8. 100

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109. 892

1—The specific conditions, covering the chartering of these vessels are embodied in the individual charter parties written in the English language, a copy of which is attached to this agreement.

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<sup>1</sup> *Post*, p. 949.

<sup>2</sup> *Post*, p. 983.

Article 2—The charter rates are hereby fixed at the monthly sum of \$1.00 per vessel, payable each month to the New York Agency of the Lloyd Brasileiro (Patrimônio Nacional).

Article 3—It is agreed that in addition to the ships above chartered there will also be placed in the traffic between the United States of America and Brazil the following ships of Brazilian flag under the same convoy protection that is accorded to ships under the control and flag of the United States, their cargoes being subject to the control established by the import and export laws of both countries:

AIURUOCA	Dw	10. 500
ARACAJÚ	"	6. 450
BARROSA	"	8. 550
CAMAMÚ	"	8. 600
COMTE. PESSOA	"	8. 520
FELIPE CAMARÃO	"	3. 400
IMTO. J. SILVA	"	8. 050
JABOATÃO	"	7. 155
LESTELOIDE	"	9. 900
MANDÚ	"	11. 460
MIDOSI	"	8. 050
RIO BRANCO	"	8. 050
TAUBATÉ	"	7. 240
TIRADENTES	"	8. 050
SANTARÉM	"	8. 140
PARANALOIDE	"	8. 300
MAUÁ	"	7. 130
CANTUÁRIA	"	7. 130
POCONÉ	"	7. 840
BRASILOIDE	"	8. 520
MOGÍ	"	6. 450
LIDIA M	"	6. 250
BURI	"	5. 124

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179. 859

Article 4—Such convoys and escort arrangements and the routes and ports of call will be decided upon between the United States Navy Department and the Brazilian Air and Navy Ministries.

Article 5—The Brazilian Government agrees to maintain as far as possible, the vessels enumerated in Article 3, in trade between the United States of America and Brazil and will endeavour to increase the number of vessels in this trade to the maximum possible.

Article 6—In the event of loss of any of the vessels enumerated both in Article 1 and in Article 3, the two Governments will endeavour to replace such vessel by another of equivalent tonnage.

Article 7—The Brazilian Government through the Merchant Marine Commission and other State agencies will at all times cooperate in every way in assisting the United States Government or its authorized agent, in supplying masters, officers, and crews and also in the solution of such crew problems as may arise.

Article 8—The chartered ships will remain under the Brazilian flag. The Brazilian Government will permit, however, the masters, officers, and crews of such vessels to be of any nationality at the discretion of the United States Government.

Article 9—If during the life of this agreement any of the vessels enumerated in Article 1 and Article 3 be lost, the United States Government obligates itself,

(1) To replace such lost vessel after the war, with a vessel of similar size, tonnage and characteristics; or

(2) If unable to effect such replacement, to pay to the Brazilian Government the amount required by the Brazilian Government in order to purchase a replacement vessel of similar size, tonnage and characteristics.

The sums required to be paid in accordance with this article and the number, tonnage and characteristics of the replacement vessels shall be determined by a Mixed Commission to be established by the two Governments within thirty (30) days after the end of the hostilities in which the United States and Brazil are at present engaged.

There shall be made in integral part of this agreement my letter No. 198, of September 18, 1942, addressed to Your Excellency, a copy of which is attached hereto. In this letter I point out that, with respect to the obligation assumed by the Government of the United States of America in Article 9 regarding the Brazilian ships enumerated in Article 3, this obligation covers all war risk, but is concerned only with total loss from marine risk and not with ordinary damage from marine risk.

It is understood that this note and that of Your Excellency, of today's date and in similar language, constitutes a formal agreement between the Governments of the United States of America and of the United States of Brazil.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

JEFFERSON CAFFERY

Enclosures:

1. Copy of charter party.
2. Copy of letter No. 198, as stated.

His Excellency

DR. OSWALDO ARANHA

*Minister for Foreign Affairs*

*Rio de Janeiro*

CHARTER PARTY

This BAREBOAT CHARTER made and concluded upon in Rio de Janeiro the \_\_\_\_\_ day of \_\_\_\_\_, 1942, between the UNITED STATES OF AMERICA (hereinafter called "UNITED STATES") acting by and through the

WAR SHIPPING ADMINISTRATION and the UNITED STATES OF BRAZIL (hereinafter called the "OWNER") acting by and through LOIDE BRASILEIRO, Patrimonio Nacional, Owner of the \_\_\_\_\_ (ex-\_\_\_\_\_) (hereinafter called the "VESSEL") of \_\_\_\_\_ tons gross register and \_\_\_\_\_ tons net register, having engines of \_\_\_\_\_ indicated horsepower, and of about \_\_\_\_\_ tons deadweight capacity.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

*Article 1.* The operation of the Vessel shall be restricted to trading between ports in Brazil and ports in the United States with the Vessel having the privilege of calling at, bunkering, or loading and/or discharging cargo at any nearby ports.

*Article 2.* The Vessel shall be delivered by the Owner to the United States under this charter and shall be redelivered by the United States to the Owner at the port of \_\_\_\_\_, or such other place as may be mutually agreed upon, and when delivered shall be or shall forthwith be made, by and at the expense of the Owner, insofar as the exercise of due diligence can make her so, tight, staunch, strong, well and sufficiently tackled, apparelled, furnished, outfitted and equipped, and in every respect seaworthy, in good running order and condition, and fit for service, and with holds clean and ready to receive cargo.

*Article 3.* The Owner shall deliver to the United States, promptly after the execution of this charter, any Vessel plans which are in existence and available to or procurable by the Owner.

*Article 4.* The United States shall pay hire as earned at the end of each calendar month at the rate of \$1.00 per vessel per month as provided for in the exchange of notes dated \_\_\_\_\_ between the Minister of Foreign Affairs of Brazil and the Ambassador of the United States, of which this charter shall be considered an integral part, and prorata for any part of a month, commencing on and from the hour that the Vessel shall be ready for delivery, (and is so reported in writing to the United States). Charter hire shall continue to be paid until the hour at which the Vessel shall be ready for redelivery (and is so reported in writing to the Owner), or if the vessel is lost, to and including the date of her loss, if known, otherwise to and including the date she is last heard from; or in the case of a declared constructive total loss, to and including the date such declaration is made; or in the case of an arranged total loss, to and including the date the loss is agreed upon.

*Article 5.* The Vessel, upon delivery, shall be tight, staunch, strong, and well and sufficiently tackled, apparelled, furnished, and equipped, and shall be in every respect seaworthy and in good running order, condition, and repair, so far as due diligence can make her so. When the Vessel is delivered to the United States, a certified statement from a recognized classification

society that the Vessel has been classed as fit for her previous usual service shall be furnished by the Owner.

Subject to such exceptions as may be noted in the report on the joint survey to be made upon delivery of the Vessel pursuant to the provisions of Article 6 hereof and accepted by the Owner and the United States as being correct or as being subject to future adjustment, the delivery of the Vessel by the Owner and the acceptance of the Vessel by the United States shall constitute a full performance by the Owner of all of the Owner's obligations under this Article, and thereafter the United States shall not be entitled to make or assert any claim against the Owner on account of any representations or warranties, expressed or implied, with respect to the Vessel, but the Owner and the United States shall share equally the cost of repairs and/or renewals occasioned by and including latent defects and/or unseen defects affecting good operating practices in the Vessel, its machinery or appurtenances, existing at the time of delivery under this agreement, and which defects were not discovered and not incorporated in the joint survey provided for in said article 6. The charter hire for the Vessel shall be reduced by one half during the period required for such repairs and/or renewals. The Vessel shall, prior to delivery, make a trial run under conditions mutually satisfactory to the joint surveyors.

*Article 6.* The United States shall, at its own expense, maintain the Vessel, so far as possible, in at least as good condition, working order and repair as said Vessel was in at the time of delivery to the United States hereunder, ordinary wear and tear excepted.

The Vessel shall be drydocked and surveyed jointly by representatives of the United States and the Owner before delivery at the expense of the Owner.

The Vessel shall be surveyed jointly by representatives of the United States and the Owner on redelivery, to determine its condition. Such survey shall include drydocking to determine the condition of the underwater parts, which drydocking shall be at the expense of the United States. If on the redelivery survey the Vessel is not in as good condition as on delivery, ordinary wear and tear excepted, then the United States before redelivery shall make at its own expense all repairs, renewals, and replacements necessary to put the Vessel in at least as good condition as on delivery, ordinary wear and tear excepted.

The Vessel shall be drydocked by the United States at its expense for cleaning and painting at least once every twelve months from the date of the last drydocking. The United States will inform the Owner's representative of the proposed date and place of drydocking.

*Article 7.* If the Vessel sustains serious damage or injury arising from a risk assumed by the United States, to such an extent that the United States shall consider her to be a constructive total loss, the United States shall have the option (to be exercised as promptly as possible, but in no event

later than 90 days from the date of loss) of declaring the Vessel to be a constructive total loss as of the date of such declaration and of taking over or selling her, and the Owner shall receive ultimate redress as provided for in the exchange of notes dated \_\_\_\_\_ between the Ambassador of the United States and the Minister of Foreign Affairs of Brazil, of which this Charter shall be considered an integral part.

*Article 8.* In case of damage (not constituting an actual, constructive, declared constructive or arranged total loss) arising from a risk assumed by the United States under the terms of this charter the Vessel, on redelivery shall, at the cost of the United States, be restored to the Owner in a condition at least as good as when delivered to the United States, less ordinary wear and tear, or in lieu of the repair of the damage by the United States, the United States (at its option) shall pay the Owner an amount for repairing the damage sufficient to place the Vessel in such condition, which payment shall include: (a) an amount (payable month by month) equal to the hire herein fixed for use of the Vessel for the period of time necessary, the utmost diligence and despatch being used, for such repairing; (b) any such further amount necessarily expended or to be expended by the Owner for insurance, wages and subsistence of master and members of the crew and other vessel expenses incurred during the period of time necessary, such diligence and despatch being used, for repairing the damage.

*Article 9.* The United States may at any time remove or alter all or any of the equipment and/or fittings and make additions to quarters and equipment, and install any additional gear or equipment for loading or discharging cargo beyond that on board at the beginning of this charter. Such work shall be done at the expense of the United States and on its time, and shall not be such as to affect the seaworthiness of the Vessel. The above, as well as structural changes in the Vessel, her boilers, machinery or appurtenances, may be made without the prior consent of the Owner. The Owner shall, however, be advised in writing of all such significant additions, alterations, removals, etc., but the Vessel on redelivery at the expiration of her service under the charter shall, unless mutually agreed otherwise, be restored at the cost of the United States to the Owner in a condition at least as good as when taken less ordinary wear and tear, or the United States (at its option) shall pay the Owner an amount for reconditioning sufficient to place the Vessel in such condition, which payment shall include: (a) an amount (payable month by month) equal to the hire herein fixed for use of the Vessel for the period of time necessary, the utmost diligence and despatch being used, for such reconditioning; (b) any such further amount necessarily expended or to be expended by the Owner for insurance, wages and subsistence of master and members of the crew and other Vessel expenses incurred during the period of time necessary, such diligence and despatch being used, for reconditioning.

*Article 10.* The United States shall have a lien on the Vessel for all moneys paid and not earned or due to the Owner, and for all advances and other payments made and, upon redelivery, for the value of fresh water and fuel, for any stores, appliances, equipment or machinery the United States may have on board or ashore which is for use on the Vessel and which the Owner has agreed to purchase or for which the Owner is liable under this charter. The United States and/or Owner as their interest may appear shall also have a lien on all cargoes and goods for the payment of freight and charges, including dead freight, demurrage, forwarding charges, charges for carriage to port of shipment and for General Average and Salvage Claims.

*Article 11.* Any deficiency at the time of delivery in the requirements of the provisions of this charter shall be remedied forthwith by and at the expense of the Owner and any time lost in remedying any such deficiency is not to be paid for by the United States.

*Article 12.* During the period of this charter, the United States shall at its own expense, or by its own procurement, man, victual, navigate, operate, supply, fuel, and repair the Vessel and pay all charges and expenses of every kind and nature whatsoever incident thereto, it being understood that the Owner retains no control, possession or command whatsoever during the period of the Charter and that the United States shall have exclusive possession, control and command of said Vessel during the period of the charter, except as may be otherwise provided for in this charter. The Owner agrees to permit the Vessel, which must remain under the Brazilian flag, to be officered and manned by crews of any nationality whatsoever at the discretion of the United States. Moreover, if the Vessel is to be delivered at a port of Brazil, the Owner shall, if requested by the United States, supply a full Brazilian crew and complement of Brazilian officers for the first voyage under this charter to a United States port; such officers and crews shall be returned at the expense of the United States to Rio de Janeiro, unless employment is found for them on the same or other Brazilian vessels or unless they desert and such desertion is reported to the Brazilian Consul at the port of desertion or nearest port where there is a Consul. The Owner, through the Brazilian Merchant Marine Commission and other agencies, will at all times cooperate in every way in assisting the United States in supplying crews and officers and in the solution of such manning problems as may arise.

*Article 13.* The United States shall pay all costs and expenses incident to the use and operation of the Vessel.

*Article 14.* The United States shall assume war, marine and all other risks or liabilities of whatsoever nature or kind, including all risks or liability for breach of statute or for damage occasioned to other vessels, persons, or property, and may provide at its expense insurance to cover the aforementioned risks in such amounts as it shall determine, and as provided for in Article 7 of this charter.

*Article 15.* A complete inventory of the Vessel's entire equipment, outfit, appliances, fuel, fresh water, and of all consumable stores shall be taken and mutually agreed upon at the time of delivery, and a similar inventory shall be taken and mutually agreed upon at the time of redelivery.

*Article 16.* The United States shall accept and pay for all fuel, fresh water and consumable stores in good order and condition, not in excess of the Vessel's normal requirements, on board at the time of Vessel's delivery at the current market prices at the port of delivery and the Owner shall accept and pay for all such fuel, water and stores in good order and condition, not in excess of the Vessel's normal requirements, left on board on redelivery at the current market prices at the port of redelivery.

*Article 17.* The United States shall have the use of all outfit, equipment and appliances inclusive of spare repair replacement parts on board without extra cost (except all rented or leased apparatus, direction finder, and auto alarms), and the same or their substantial equivalent shall be returned to the Owner when the Vessel is redelivered in the same or as good order and condition as when received, ordinary wear and tear excepted. All rentals on such rented or leased apparatus and appliances which the United States decides to retain on board shall be paid for by the United States for the period covered by this charter; any such apparatus or appliances which the United States decides not to retain will, if left aboard, be for Owner's responsibility and liability: Provided, that the United States shall be required to pay any rentals or contract terminating fees, to the extent that the Owner cannot by due diligence be relieved thereof. The United States shall also have the benefit of all such apparatus and appliances and spare repair replacement parts on shore, at prices to be mutually agreed upon between the parties, and the Owner shall furnish the United States forthwith with a list of such parts and equipment.

*Article 18.* All payments to be made by the United States to the Owner shall be made to the nominee of the Owner in New York, and all payments to be made by the Owner to the United States, under the terms of this Charter, shall be made in the District of Columbia to the Administrator, War Shipping Administration.

*Article 19.* Unless otherwise terminated by the provisions of article 22, the period of this charter party shall be for the duration of the war in which the United States is now engaged.

*Article 20.* Wherever and whenever herein any right, power, or authority is granted or given to the United States, such right, power, and authority may be exercised by the Administrator, War Shipping Administration, or such agent or agents as it may appoint or by its nominee, and the act or acts of the Administrator, War Shipping Administration, or of such agent or agents or nominee, when taken, shall constitute acts of the United States, as Charterer hereunder. All obligations herein assumed by the United States shall be performed by the Administrator, War Shipping Administration.



*Article 21.* The Owner shall forever indemnify and hold harmless the United States against any claims or liens or other charges or incumbrances of whatsoever nature upon the Vessel at the time of its delivery hereunder. The United States shall forever indemnify, hold harmless and defend the Owner against any liens of whatsoever nature by whomsoever asserted and against any claim of lien (including costs and reasonable attorneys' fees paid or incurred in defending any such claim, whether or not the claim be found to be valid) whenever and by whomsoever asserted, upon the Vessel at the time of its redelivery hereunder. The United States shall also indemnify, hold harmless and defend the Owner and the Vessel against any claims, demands, or liabilities against them or either of them (including costs and reasonable attorneys' fees in defending such claim or demand, whether or not the claim or demand be found to be valid) arising out of the use or operation of the Vessel by the United States or any subcharterer, or out of any act or neglect of the United States or any subcharterer, in relation to the Vessel, or out of any obligation or liability incurred by the United States or subcharterer.

*Article 22.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

*Article 23.* No member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this charter or to any benefit that may arise therefrom, except as provided in Section 116 of the Act, approved March 4, 1909 (35 Stats. 1109). No member of or Delegate to Congress, nor Resident Commissioner, shall be employed by the Owner either with or without compensation as an attorney, agent, officer or director.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate as of the day and year first hereinabove written.

United States of America

By:

United States of Brazil

By:

UNITED STATES LETTER

No. 198

RIO DE JANEIRO  
September 18, 1942

MY DEAR MR. MINISTER:

Referring to our recent conversations regarding the ship proposal, I have just received a telegram from the Department of State in reply to my telegram in which I transmitted the comments of Your Excellency's Government, and I am pleased to report below the views expressed therein:

The changes in Articles 3, 4 and 5 are accepted by the War Shipping Administration.

The War Shipping Administration would prefer, instead of the new article 9 as it now stands "replacement by vessels of similar tonnage, size and characteristics."

Also, according to the new article 9, the United States Government will be obligated to replace ships listed in Article 3, regardless of loss by either marine or war risk. This is in contrast to our original proposal to limit the obligation to war risks. The War Shipping Administration has no objection to extending the commitment, provided that it is clearly understood that my Government is concerned only with total losses from marine risks and not with ordinary damage from marine risks.

As regards the changes in Article 1 of the Bareboat Charter, it is suggested that "wayports" be changed to "nearby ports", and that the term "between the two countries" be omitted.

I shall await with pleasure Your Excellency's views on the above mentioned points.

With all good wishes,  
Yours very sincerely,

JEFFERSON CAFFERY

His Excellency

Dr. OSWALDO ARANHA  
*Minister for Foreign Affairs*  
*Rio de Janeiro*

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*The Minister of Foreign Affairs to the American Ambassador*

[TRANSLATION]

EC/AC/496/940.(00)/585.2

SEPTEMBER 30, 1942

MR. AMBASSADOR:

I have the honor to inform Your Excellency that the Brazilian Government agrees to the conclusion with the Government of the United States of America of an agreement on shipping between our two countries, in accordance with the following terms:

#### ARTICLE I

The Brazilian Government shall charter to the United States Government the following Government owned vessels, for the duration of the war in which the United States is at present engaged:

CEARALOIDE	Dw	8. 650
MINASLOIDE	"	8. 380
VITORIALOIDE	"	9. 500
NORTELOIDE	"	7. 535
GAVEALOIDE	"	9. 900
APALOIDE	"	7. 000
GOIAZLOIDE	"	8. 125
PELOTASLOIDE	"	7. 920
RECIFELOIDE	"	8. 050
BAIALOIDE	"	10. 107
RIOLOIDE	"	8. 575
SULOIDE	"	8. 050
PIRAILOIDE	"	8. 100

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109. 892

Sole paragraph. The specific conditions, covering the chartering of these vessels are embodied in the individual charter parties written in the English language, a copy of which is attached to this agreement.

## ARTICLE II

The charter rates are hereby fixed at the monthly sum of \$1.00 per vessel, payable each month to the New York Agency of the Lloyd Brasileiro (Patrimônio Nacional).

## ARTICLE III

It is agreed that in addition to the ships above chartered there will also be placed in the traffic between the United States of America and Brazil the following ships of Brazilian flag under the same convoy protection that is accorded to ships under the control and flag of the United States, their cargoes being subject to the control established by the import and export laws of both countries:

AIURUOCA	Dw	10. 500
ARACAJÚ	"	6. 450
BARROSA	"	8. 550
CAMAMÚ	"	8. 600
COMTE. PESSOA	"	8. 520
FELIPE CAMARÃO	"	3. 400
IMTO. J. SILVA	"	8. 050
JABOATÃO	"	7. 155
LESTELOIDE	"	9. 900
MANDÚ	"	11. 460
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POCONÉ	"	7. 840
BRASILOIDE	"	9. 520
MOGÍ	"	6. 450
LIDIA M	"	6. 250
BURÍ	"	5. 124

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179. 859

## ARTICLE IV

Such convoys and escort arrangements and the routes and ports of call will be decided upon between the United States Navy Department and the Brazilian Air and Navy Ministries.

## ARTICLE V

The Brazilian Government agrees to maintain, as far as possible, the vessels enumerated in Article 3, in trade between the United States of America and Brazil and will endeavour to increase the number of vessels in this trade to the maximum possible.

## ARTICLE VI

In the event of loss of any of the vessels enumerated in both Article 1 and Article 3, the Governments of Brazil and of the United States of America will endeavor to replace such vessel by another of equivalent tonnage on the route between the two countries, in order to preserve the regularity of traffic.

## ARTICLE VII

The Brazilian Government through the Merchant Marine Commission and other State agencies will at all times cooperate in every way in assisting the United States Government or its authorized agent, in supplying masters, officers, and crews, and also in the solution of such crew problems as may arise.

## ARTICLE VIII

The chartered ships will remain under the Brazilian flag. The Brazilian Government will permit, however, the masters, officers, and crews of such vessels to be of any nationality at the discretion of the United States Government.

## ARTICLE IX

If during the life of this agreement any of the vessels enumerated in Article 1 and Article 3 be lost, the United States Government obligates itself,

(1) To replace such lost vessel after the war, with a vessel of similar size, tonnage, and characteristics; or

(2) If unable to effect such replacement, to pay to the Brazilian Government the amount required by the Brazilian Government in order to purchase a replacement vessel of similar size, tonnage, and characteristics.

The sums required to be paid in accordance with this article and the number, tonnage and characteristics of the replacement vessels shall be determined by a Mixed Commission to be established by the two Governments within thirty (30) days after the end of the hostilities in which the United States and Brazil are at present engaged.

2. Letter No. 198, of September 18 of this year, a photostat copy of which is attached, shall be an integral part of this Agreement, Your Excellency having informed me in the said letter, referring to the obligation assumed by the Government of the United States of America in Article 9 regarding the Brazilian ships enumerated in Article 3, that this obligation covers all war risks, including even marine risks but only when the latter risks result in the total loss of a Brazilian vessel.

3. It is understood that this note and that of Your Excellency, of today's date and in similar language, constitutes a formal agreement between the Governments of the United States of Brazil and the United States of America.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

OSWALDO ARANHA

His Excellency

JEFFERSON CAFFERY

*Ambassador of the United States  
of America*